IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1278 OF 2004

Munnalal R. Agarwal & Ors. ..Appellants

versus

Prabhakar V.Kachare & Ors. ..Respondents

Mr. P. B. Shah for the Appellants.

Mr. S. Rairkar for the Respondents No.1 to 3.

Mr. P. N. Vora i/b. Pramod Kumar & Co. for Respondent No.4.

CORAM : D. G. DESHPANDE,J.

DATE : 17TH OCTOBER,2005

P.C. :

1. Heard learned counsel for the parties.

2. Appellants are the Plaintiffs. They had filed a Suit in 2004 being Special Civil Suit No. 82 of 2004 for specific performance of the agreement dated July 1968. There were in all 8 prayers in the plaint. Prayer (i) and (ii) related to specific performance, prayer (iii) related to compensation, in case specific performance cannot be granted, prayer (iv) was against the defendants for removal of encroachment on the suit land and for handing

over possession of the encroached area to the plaintiffs, and prayer (v) was for permanent injunction against the defendants not to make any constructions, as prayed. The Defendants raised preliminary objection of limitation to the suit and an issue was framed by the court whether the suit was within limitation. On the face of it, and, as rightly held by the court, the claim for specific performance filed in 2004 on the basis of agreement dated July 1968 was clearly and hopelessly barred by limitation, therefore that objection of the defendants was upheld and the suit was dismissed. It is this order that is challenged in the present appeal.

3. When confronted with the legal position, Mr. Shah conceded that so far as claim of the plaintiffs for specific performance is concerned i.e. prayers (i) and (ii), the court may be justified but when the plaintiffs have also claimed relief of removal of encroachment and injunction, the suit ought not to have been dismissed in its entirety.

4. I find considerable force in the submissions. It is true that the plaintiffs have joined different causes of action in this particular suit. In any case reliefs as prayed in prayers (iv) and (v) were totally different from the relief of

specific performance, and therefore, even if the trial court was justified in dismissing the suit so far as specific performance is concerned, on the ground of limitation, the suit ought not to have been dismissed in its entirety. In view of this, I pass the following order :

ORDER

. The order of dismissal of the suit is maintained so far as it relates to the claim of the plaintiff for specific performance i.e. prayer clauses (i) to (iii) of the suit. So far as it relates to prayers for removal of encroachment and injunction as per prayer clauses (iv) and (v), is restored. The trial court to hear the parties again and decide the suit on merits. All issues kept open.

. Statement of the Advocate for the Respondent No. 4 that the respondent No.4 is not concerned with S. No. 77/4 is recorded. It is also clarified that no order of the Court is there against respondent No.4 so far as it relates to S. No. 77/1/2/3.

. Parties to appear before the trial court on 21.11.2005.

. Trial court to decide Exhibit ’5’ as expeditiously as possible and in any case within a

period of three months from the date of first appearance of the parties.

17.10.2005 (D.G. DESHPANDE, J.)